

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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LOVELL N. OATES,

Plaintiff,

v.

TOM ROY, COMMISSIONER, MDOC,  
SCOTT MCNURLIN, SHERIFF GOODHUE  
CO.

Defendants.

Case No. 16-CV-2010 (ADM/FLN)

**AMENDED REPORT AND  
RECOMMENDATION<sup>1</sup>**

Plaintiff Lovell N. Oates commenced this action by filing a complaint seeking relief for alleged violations of his civil rights under 42 U.S.C. § 1983. ECF No. 1. He did not pay any filing fee for this action, but instead filed a “Motion for *in forma pauperis*” (“IFP”). ECF No. 2. In an order dated July 21, 2016, this Court ordered Oates to file an amended IFP application that included the certified inmate trust account information and to pay the initial partial filing fee. *See* ECF No. 6. The Court instructed Oates on how to calculate his initial partial filing fee. ECF No. 6 at 3. Oates was given thirty days from the date of the order to file an amended IFP application and to pay the initial partial filing fee, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

That deadline passed on or about August 23, 2016 and Oates did not file an amended IFP application, or pay the required filing fee, or provide any explanation for his failure to do so. Then, more than six weeks late, on October 7, 2016, Oates filed an IFP application but still did not pay an initial partial filing fee. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure

to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated: October 31, 2016

s/Franklin L. Noel

FRANKLIN L. NOEL

United States Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

**Under Advisement Date:** This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.

1. **On October 26, 2016, the Court recommended dismissal of Oates’ case but did not acknowledge receipt of the second IFP application that was received on October 7, 2016. See ECF Nos. 8, 9. This Amended Report and Recommendation provides a more complete explanation of the sequence of events and for the recommendation.**